

APPEAL NO. 020299
FILED MARCH 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 14, 2002. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury sustained on _____, extends to include depression, but does not extend to include a herniated disc at C5-6, post-traumatic stress syndrome, post-concussive syndrome, chronic pain syndrome, and bipolar disorder; that the Texas Workers' Compensation Commission (Commission) has jurisdiction to hear the claimant's claim for disability from the compensable injury of _____; and that the claimant had disability for the period of June 17, 1999, through January 11, 2000.

The appellant/cross-respondent (carrier) appealed, arguing essentially that the hearing officer's determinations are against the great weight and preponderance of the evidence. The carrier contends, specifically, that the hearing officer erred by exceeding his jurisdiction in determining disability by relying on a prior jury determination; that the doctrine of collateral estoppel applies to the disability issue as a matter of law; and in determining that the compensable injury extends to depression. The claimant filed a response, urging affirmance of the hearing officer's determinations regarding jurisdiction over the disability issue and the inclusion of depression as part of the injury. Also, the claimant filed a cross-appeal, arguing that the hearing officer erred in determining extent of injury, except for the depression; that collateral estoppel and/or *res judicata* applied to the issue of the cervical injury; and that the hearing officer erred in determining that the period of disability was June 17, 1999, through January 11, 2000. The carrier filed a response to the claimant's cross-appeal and argued that the doctrines of collateral estoppel and/or *res judicata* did not apply to the cervical injury because the claimant did not appeal to the Appeals Panel the finding with regard to the cervical injury.

DECISION

Affirmed in part, reversed and rendered in part.

The claimant testified that he caught his index finger in a large printing machine on _____; that when he jerked back to free his finger, he hit his head forcefully on the machine; that his finger was nearly severed at the joint and subsequently required surgery; and that he screamed out, hit his head very hard, and was so dazed by the force of the contact with the machine that he did not realize he had severely injured and nearly severed his finger until it was called to his attention by his coworker. He said he did not complain of head problems until several weeks after the injury.

Following a previous CCH held on March 15, 1999, another hearing officer determined that the compensable injury sustained by the claimant on _____, did extend to the head, but not to the right shoulder and back; and that the claimant had disability resulting from such injury from _____, through July 9, 1998, and from

October 7, 1998, through November 20, 1998. The carrier and the claimant both appealed from the hearing officer's adverse determinations. The Appeals Panel affirmed the hearing officer's determinations in Texas Workers' Compensation Commission Appeal No. 991030, decided June 25, 1999 (unpublished). The carrier then sought judicial review and on October 17, 2001, the _____ (District Court) affirmed that the injury extended to the head but reversed the disability determination. The carrier represented that the District Court judgment has been further appealed.

The claimant testified that since the CCH, additional injuries from the compensable injury have become manifest. The claimant states that he has a herniated disc at C5-6, post-concussive syndrome, depression, bipolar disorder, post-traumatic stress syndrome, and chronic pain syndrome, all from the compensable injury. The parties stipulated that the disability period in question was from April 24, 1999, through January 11, 2000.

JURISDICTION

The carrier asserts that the hearing officer erred in determining that the claimant had disability from June 17, 1999, through January 11, 2000, by relying upon a previous jury verdict to make his determination. We do not agree. The carrier sought judicial review of the determinations from the earlier CCH that the claimant's compensable injury of _____, extended to his head and that he had disability from _____, through February 9, 1998, and from October 7, 1998, through November 20, 1998. Section 410.207 provides that "[d]uring judicial review of an appeals panel decision on any disputed issue relating to a workers' compensation claim, the commission retains jurisdiction of all other issues related to the claim." See Texas Workers' Compensation Commission Appeal No. 981716, decided September 4, 1998; Texas Workers' Compensation Commission Appeal No. 951111, decided August 23, 1995. The evidence sufficiently supports the hearing officer's determination that the Commission has jurisdiction to hear the claimant's allegations of disability from the compensable injury of _____, given that the injury included not only the index finger and head, but also the cervical spine and depression, and that the period of disability in dispute was from April 24, 1999, through January 11, 2000.

EXTENT OF INJURY

The carrier asserts that the hearing officer erred in determining that the compensable injury extends to depression. The hearing officer cites the medical reports in evidence as reflecting that both Dr. MH and Dr. P diagnosed the claimant with depression. The hearing officer could conclude from all the evidence that the depression related to the claimant's injury, which included a head injury. We affirm the hearing officer's determination that the claimant's compensable injury extends to include depression.

The claimant had the burden to prove by a preponderance of the evidence that his

compensable injury of _____, extends to and includes depression, a herniated disc at C5-6, post-traumatic stress syndrome, post-concussive syndrome, chronic pain syndrome, and bipolar disorder, as he claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility to be given the evidence. As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We are satisfied that the challenged determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust as to depression only, and reverse as to herniated disc at C5-6, pursuant to Section 410.169. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant asserts that the hearing officer erred in determining that his compensable injury did not extend to or include a herniated disc at C5-6, and that the doctrines of collateral estoppel and/or res judicata apply because the dispositive findings in the previous decision and order were not appealed and are binding and final. We agree. In a Decision and Order dated April 23, 1999, involving the parties, another hearing officer determined the following:

FINDINGS OF FACT

5. Claimant sought medical treatment for his complaints and was diagnosed as having a concussion and herniated nucleus pulposus at C5-C6 with bilateral foraminal stenosis.
6. The evidence presented was insufficient to show Claimant sustained an injury to his right shoulder or back.
7. As a result of the _____ injury and Claimant's head (concussion) and cervical conditions, which result from the _____ accident, Claimant was unable to obtain and retain employment at wages equivalent to the preinjury wage from _____ through July 9, 1998.

Although the cervical spine injury was not specifically included in a conclusion of law or in the "Decision" portion of the Decision and Order, that hearing officer clearly found as fact that the claimant's herniated nucleus pulposus at C5-6 with bilateral foraminal stenosis was a part of the compensable injury of _____. We note from our previous decision, Appeal No. 991030, *supra*, that these findings regarding the cervical injury were not appealed. Pursuant to Section 410.169, the inclusion of the cervical injury is final and binding on the parties. Accordingly, we reverse the hearing officer's determination that the

compensable injury does not extend to include a herniated disc at C5-6, and render a new decision that the claimant's compensable injury of _____, includes a herniated disc at C5-6.

DISABILITY

The claimant asserts on appeal "that the time period in question should be extended to the present time and not arbitrarily limited to January 11, 2000." However, the parties stipulated that "[t]he period of disability in dispute is April 24, 1999, through January 11, 2000." Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The evidence sufficiently supports the hearing officer's determination that the claimant had disability from June 17, 1999, through January 11, 2000, within the time period stipulated by the parties. The hearing officer's determination is not so against the great weight of the evidence as to compel its reversal on appeal. Cain, *supra*.

We affirm the hearing officer's determinations that the claimant's compensable injury sustained on _____, extends to include depression but does not extend to include post-traumatic stress syndrome, post-concussive syndrome, chronic pain syndrome, and bipolar disorder; that the Commission has jurisdiction to hear the claimant's allegations of disability from the compensable injury of _____; and that the claimant had disability for the period of June 17, 1999, through January 11, 2000.

We reverse the hearing officer's determination that the claimant's compensable injury of _____, does not extend to and include a herniated disc at C5-6 and we render a new decision that such injury does extend to and include a herniated disc at C5-6.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD A. MAYER
11910 GREENVILLE AVENUE
SUITE 600
DALLAS, TEXAS 75243.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge